

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

MICHAEL E. FLOURNOY,

Plaintiff,

v.

ORDER

Case No. 14-cv-554-jdp

JOHN G. MCKENZIE, UNITES STATES
ATTORNEY OFFICE NDI-WD,
THOMAS G. BRUTON, MARY T. LINDBLOOM,
TERENCE JAMES HEATHERMAN,
NEAL C. GRUHN, WAYNE JACKOWSKI,
CRAIG SMITH, ADAM KING,
JOHN D. RICHARDSON, FREDERICK J. KAPALA,
JENNIFER TABORSKI, TINA M. CACCIATORE,
WINNEBAGO COUNTY SHERIFF'S OFFICE,
LARRY MARINO, DOMINIC ISPARRO,
ROBERT JUANEZ, DANIEL FREEDLAND,
JOSEPH BOOMER, BRAD KAISER AND
JULIE DODD,

Defendants.

Plaintiff Michael E. Flournoy, a prisoner incarcerated at Oxford - FCI in Oxford, Wisconsin, has submitted a proposed civil action under 42 U.S.C. § 1983. Plaintiff has not paid the \$400 filing fee nor submitted a motion for leave to proceed without prepayment of the filing fee in this case. However, on August 7, 2014, plaintiff did submit a motion for leave to proceed without prepayment of the filing fee (dkt. #3) and a six-month trust fund account statement (dkt. #5) in case no. 14-cv-528-jdp. Therefore, I will construe his complaint in this case to include a request to proceed without prepayment of the filing fee by adopting the motion for leave to proceed without prepayment of the filing fee (dkt. #3) and six-month trust fund account statement (dkt. #5) filed in case no. 14-cv-528-jdp. After

considering the six-month trust fund account statement plaintiff submitted in case no. 14-cv-528-jdp, I conclude that plaintiff qualifies for indigent status.

Even when a prisoner litigant qualifies for indigent status, he must pay a portion of the fee returned by the formula set forth in 28 U.S.C. § 1915(b)(1). According to this formula, a prisoner litigant must prepay 20% of the greater of the average monthly balance or the average monthly deposits made to his prison account in the six-month period immediately preceding the filing of the complaint.

In this case, 20% of the average monthly balance is \$14.90, and 20% of the average monthly deposits made to his account is \$19.00. Because the greater of the two amounts is 20% of the average monthly balance, or \$19.00, that is the amount plaintiff will be assessed as an initial partial payment of the filing fee. For this case to proceed, plaintiff must submit this amount on or before September 5, 2014.

If plaintiff does not have the money to make the initial partial payment in his regular account, he will have to arrange with prison authorities to pay some or all of the assessment from his release account. This does not mean that plaintiff is free to ask prison authorities to pay *all* of his filing fee from his release account. The only amount plaintiff must pay at this time is the \$19.00 initial partial payment. Before prison officials take any portion of that amount from plaintiff's release account, they may first take from plaintiff's regular account whatever amount up to the full amount plaintiff owes. Plaintiff should show a copy of this order to prison officials to insure that they are aware they should send plaintiff's initial partial payment to this court.

ORDER

IT IS ORDERED that,

1. Plaintiff Michael E. Flournoy is assessed \$19.00 as an initial partial payment of the \$350.00 fee for filing this case. He is to submit a check or money order made payable to the clerk of court in the amount of \$19.00 on or before September 5, 2014.

2. If, by September 5, 2014, plaintiff fails to make the initial partial payment or show cause for his failure to do so, he will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff's filing his case at a later date.

3. No further action will be taken in this case until the clerk's office receives plaintiff's initial partial filing fee as directed above and the court has screened the complaint as required by the PLRA, 28 U.S.C. § 1915A. Once the screening process is complete, a separate order will issue.

Entered this 15th day of August, 2014.

BY THE COURT:

/s/

PETER OPPENEER
Magistrate Judge